Annual Report

BC Human Rights Tribunal

2004-2005

DOC
BC
B68485
B
2004/05
c.3

LEGISLATIVE LIBRARY SEP 26 2005

LEGISLATIVE LIBRARY OF BRITISH COLUMBIA
3 3298 00309 9836

106-00448/

LETTER TO THE ATTORNEY GENERAL

BRITISH COLUMBIA

British Columbia Human Rights Tribunal

Suite 1170, 605 Robson St.
Vancouver BC V6B 5J3

Phone: (604) 775-2000
Toll Free: 1-888-440-8844
TTY: (604) 775-2021
FAX: (604) 775-2020
Internet: www.bchrt.bc.ca

July 6, 2005

Honourable Wally Oppal
Attorney General
Province of British Columbia
Room 232
Parliament Buildings
Victoria, BC V8V 1X4

Dear Attorney General:

It is my pleasure to present the second Annual Report from the BC Human Rights Tribunal covering the period April 1, 2004, to March 31, 2005.

This report has been prepared in accordance with section 39.1 of the *Human Rights Code*.

Yours truly,

HMacNaughton

Heather M. MacNaughton
Chair

HM/sor

MESSAGE FROM THE CHAIR

The Tribunal has completed its second successful year of operation under the direct access model.

STATUTORY AMENDMENTS AND NEW RULES

In the early part of the year, the Tribunal completed a consultation on its *Rules of Practice and Procedure*. Taking into account input and comments from stakeholders, the Tribunal's own experience over its first year of operation, and changes necessitated by the *Administrative Tribunals Act (ATA)*, amended *Rules* were prepared. Implementation of the amendments took effect October 15, 2004, to coincide with the proclamation of those sections of the *ATA* relating to the Tribunal.

The *ATA* contained some significant changes affecting the Tribunal. They include:

- setting a legislated standard of review of Tribunal decisions (s. 59);
- removing the Tribunal's Charter jurisdiction, including as it relates to the constitutional validity of sections of the *Code* (s. 45);
- setting the time period to file an application for judicial review at sixty days from the release of the Tribunal's final decision, unless extended by court order (s. 57);
- clarifying the application of the *Freedom of Information and Protection of Privacy Act* to the work of the Tribunal;
- replacing the Tribunal's former *Inquiry Act* powers.

TRIBUNAL WORKLOAD

The Tribunal continues to have a significant workload. Members released four hundred and sixty-nine interim decisions, thirty-nine final decisions, and presided over fifty-three hearings in the year in addition to having twenty-five percent of their time scheduled to mediate complaints.

With the collective efforts of all Tribunal staff, as the year progressed, more cases were scheduled for hearing less than a year from the date on which they were first filed with the Tribunal and more cases filed under the old human rights system were resolved.

CHANGES TO THE WEB SITE

In our first year of operation, only selected preliminary decisions were posted to our web site. In the fall of 2004, the Tribunal decided to publish all decisions to allow for greater access and understanding. All prior unreported decisions have been posted and newly released decisions are available on the web site on the day they are released to the parties.

The Tribunal completed major upgrades to its web site and created an enhanced search feature.

The number of visits to our web site indicates that it is a useful tool for participants in our process and others.

JUDICIAL REVIEWS

This year, much of the Tribunal's legal counsel resources were spent in dealing with applications for judicial review of Tribunal decisions.

MESSAGE FROM THE CHAIR

This was anticipated as a result of new legislation, new powers, and the new provisions of the *ATA*. Judicial review decisions are linked on our website, when available.

POLICIES, PUBLICATIONS AND PROCESSES

The Tribunal developed a mediation policy which is available on the web site. It also published a policy dealing with complainants who lose touch with the Tribunal or who fail to respond to communications from the Tribunal.

At present, the Tribunal's guides, information sheets and other materials are available in Chinese and Punjabi. In the coming year, materials will be reviewed to determine whether there are steps we can take to enhance our accessibility to those in our society who are less literate.

The Tribunal continues to review its processes and welcomes comments from its stakeholders.

MEDIATION

Demand for mediation services at the Tribunal continues to be high and our success rate tells us that our efforts are worthwhile.

The University of British Columbia concluded its survey of the Tribunal's mediation services. The Tribunal looks forward to the report which is expected next year and will consider options to enhance our mediation services based on the results.

CHALLENGES

Some complainants continue to struggle to articulate their complaints. Through its screening process, the Tribunal determines if each complaint alleges a contravention of the *Code*. The Tribunal has taken a number of steps to simplify the process of making a complaint. It revised the complaint form to address some common errors, and to elicit necessary information. It gives Complainants an opportunity to provide further information, where there are difficulties. The Tribunal encourages complainants to access the human rights clinic's services and, in particular, the services provided by them one day a week at the Tribunal's offices.

The Tribunal continues to streamline processes, train staff and provide information to the public. The Tribunal will explore other ways of communicating with parties to make our processes and the jurisdiction under the *Code* clear.

THANKS

I would like to thank the staff and members of the Tribunal for their continued dedication to the objects of the *Code* and the effectiveness of our process.

Heather M. MacNaughton
Chair

WHAT'S NEW?

Significant legislative change, a refinement and publication of Tribunal policy, and technological improvements were among the changes at the Tribunal this year.

The *Administrative Tribunals Act*, R.S.B.C. 2004, c. 45 was introduced in the last legislative assembly. Sections applicable to the B.C. Human Rights Tribunal came into force on October 15, 2004, resulting in amendments to the *Code* and consequential changes to the Tribunal's *Rules of Practice and Procedure*. The Tribunal delayed implementing changes to its *Rules*, which had been prepared after a stakeholder consultation and a comprehensive rules review, to coincide with the *ATA* coming into force with respect to the Tribunal. The Tribunal issued a revised version of its *Rules* on October 15, 2004.

A Settlement Meeting policy and a policy addressing a complainant's duty to communicate with the Tribunal have been established. The Tribunal's web site has been simplified and updated in conjunction with an enhanced search feature. Previously unreported decisions were posted on the web site. This Report summarizes the highlights of the changes.

THE ADMINISTRATIVE TRIBUNALS ACT

The *Administrative Tribunals Act* repealed the Tribunal's jurisdiction in some areas and repealed and replaced it in others.

The Tribunal's former *Inquiry Act* powers were replaced. Significant changes include the introduction of a sixty-day time limit for filing a petition for judicial review of a Tribunal decision, a statutory statement of the standard of review applicable to Tribunal decisions, and repeal of the Tribunal's jurisdiction to determine *Charter of Rights* issues. The *ATA* also replaced orders of discontinuance with orders of dismissal when a complaint settles or is withdrawn, and replaced the Tribunal's power to summons witnesses and order prehearing disclosure with a power to order a person to attend a hearing or to provide disclosure, including the power to order disclosure of documents from sources other than the parties to a proceeding.

RULES OF PRACTICE AND PROCEDURE REVISION

The *Code* authorizes the Tribunal to make rules and orders respecting practice and procedure. In response to the amendments to the *Code* made on March 31, 2003, which eliminated the Commission, the institution which had been responsible for receiving and screening complaints, the Tribunal developed new rules intended to fairly and efficiently process complaints. In order to promote public accessibility and predictability, the Tribunal also introduced Forms, Guides and Information Sheets, all drafted in clear language.

In the Spring of 2004, participants were invited to provide the Tribunal with feedback: How effective was the new process? Were there recurrent problems? Had the Tribunal failed to anticipate issues? How could we improve? Although the Tribunal did not receive a large number of responses, comprehensive commentary was received from representatives of both complainants and respondents, and internally from case managers and Tribunal members. That input, together with a year of operational experience, was very helpful.

Overall, commentators were satisfied with the direct access system. The issues raised primarily concerned fine-tuning Tribunal procedural requirements to make them more appropriate to

the circumstances of each case. A good example was the requirement for disclosure: we were told that requiring parties to disclose, when there was a decision pending that might result in the complaint being dismissed due to lack of jurisdiction, was unnecessarily onerous. Now, disclosure is required only after a decision is made that the Tribunal has jurisdiction.

On the other hand, a delay in the filing of a Response to a complaint often resulted when parties rescheduled Early Settlement Meetings. This was corrected by establishing a more precise time limit for the filing of a Response.

The Tribunal made other changes to its *Rules*, some significant, many minor in nature. Information Sheets and Practice Directions were published outlining the changes and explaining the impact of the new *Rules* on existing complaints. The Tribunal chair and legal counsel participated in a number of workshops and education forums outlining the changes to the *Rules*. On request, the Tribunal provided training to representatives regularly appearing before it.

Forms Revision

The Tribunal revised its Complaint Form early in the year to make it simpler for complainants to identify the area(s) and ground(s) of discrimination, and to provide sufficient detail to support the complaint. The new form sets out the grounds that apply to each area, and asks four questions about the details of the complaint.

The Tribunal revised the other forms in conjunction with its *Rules* revisions. The Complaint Withdrawal Form is now filed when complaints are withdrawn for any reason, including settlement of the complaint. The forms used in an application to add a respondent were revised to conform to the revised procedure set out in the *Rules*. The Tribunal also created amendment forms for use by complainants and respondents who want to amend a complaint or response to complaint.

Tribunal Web Site

The Tribunal web site now includes the following features:

Guides and Information Sheets translated into Punjabi and Chinese;

Publication of all Tribunal decisions including previously unpublished, preliminary decisions;

A simplified format for posting of Tribunal decisions;

A new, "advanced search" feature which allows for searching by *Code* section number, key words and phrases, parties' and members' names; and date of decision.

Posting of employment opportunities with the Tribunal.

University of B.C. Survey

Between July and December, the University of British Columbia conducted a user survey of parties who engaged in Tribunal Settlement Meeting processes. All participants were given a written survey and invited to provide an anonymous response. A further, in-depth, interview could follow with the parties' consent. Over one hundred and twenty participants completed the survey. The results are currently being analyzed. The Tribunal looks forward to the publication of the research results next year.

POLICIES AND PROCEDURES

POLICIES AND PROCEDURES

In our second year of operation the Tribunal determined that it had sufficient experience to introduce policies in the areas of Settlement Meetings and Complaint Abandonment.

SETTLEMENT MEETING POLICY AND PROCEDURE (DECEMBER 1, 2004)

The Settlement Meeting Policy and Procedure was adopted to make the process predictable and consistent and to provide detailed information regarding the Tribunal's expectations concerning participation in the settlement process.

The Tribunal offers settlement meeting services as one means of fulfilling the purposes of the *Code*, which include the elimination of discrimination, the promotion of a climate of mutual understanding and respect, and a means of redress for individuals who are discriminated against contrary to the *Code*.

Settlement meetings are voluntary and the meetings themselves are confidential. The Tribunal uses its members, legal counsel and contract mediators to conduct settlement meetings. Parties may attend on their own or with an advocate.

Early Settlement Meetings allow parties to put the complaint process briefly on hold to discuss what gave rise to the complaint and to explore the possibility of settlement in a meeting conducted by a Tribunal mediator.

Settlement meeting services are offered throughout the life of a complaint file. The Tribunal provided settlement meetings in three hundred and thirty-nine complaints and two hundred and twenty-one cases settled. In addition, another one hundred and thirty-two cases were settled by the parties with or without the Tribunal's assistance.

The Settlement Meeting Policy and Procedure is located on the Tribunal's website at www.bchrt.bc.ca under policies.

POLICY ON COMPLAINANT'S DUTY TO COMMUNICATE WITH THE TRIBUNAL (DECEMBER 3, 2004)

To assist in achieving efficiency and predictability, the Tribunal also developed a policy on a complainant's duty to communicate with the Tribunal. Some complainants, after filing a complaint, do not wish to proceed with it but do not advise the Tribunal. This policy requires that a complainant provide an address for delivery and to respond to correspondence from the Tribunal in a timely manner. If the complainant fails to maintain contact or to respond to communications, a notice is sent requiring the complainant to respond in thirty days. Failure to do so will result in dismissal of the complaint.

All complainants are advised of their obligation to maintain contact with the Tribunal early in the process.

INQUIRY STATISTICS

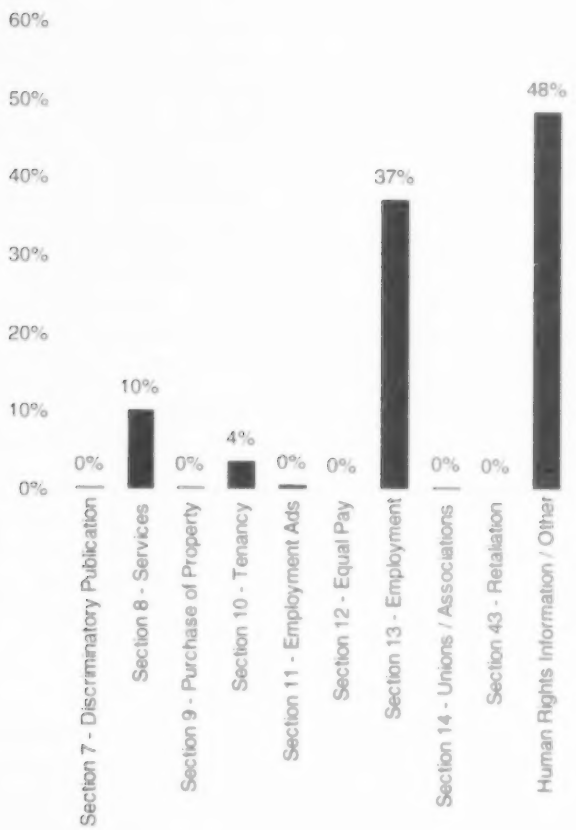
General inquiries about the Tribunal process are answered by two Inquiry Officers. The Inquiry Officers also provide basic information about the *Code* protections and refer callers to appropriate resources. They answered sixteen thousand and thirty-one inquiries this year, averaging sixty-five calls a day.

The highest percentage of inquiries, 37%, related to employment (sections 13 and 14 of the *Code*). Inquiries relating to services (section 8),

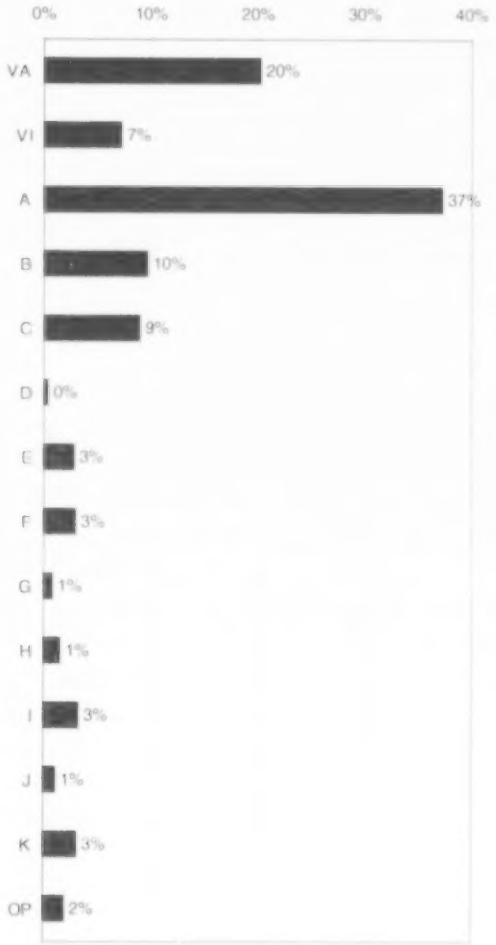
represented 10% of the inquiries and those relating to tenancy (section 10) represented 4% of the total.

A toll-free number enables callers throughout the province to access the Inquiry Officers. The geographic origin of inquiries indicates that 20% originated from Vancouver, 37% from the Lower Mainland, 7% from Victoria, and 24% from elsewhere in the province.

Summary of Complaint Inquiries



Geographic Origin of Inquiries



LEGEND

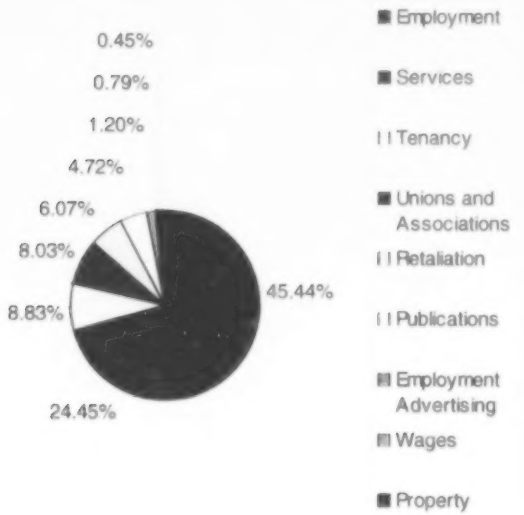
VA ..... VANCOUVER
VI ..... VICTORIA
A ..... LOWER MAINLAND (EXCLUDING VANCOUVER)
B ..... VANCOUVER ISLAND & GULF ISLANDS (EXCLUDING VICTORIA)
C ..... OKANAGAN
D ..... ROCKY MOUNTAINS
E ..... SQUAMISH / KAMLOOPS
F ..... KOOTENAYS
G ..... SUNSHINE COAST
H ..... CARIBOO
I ..... PRINCE GEORGE AREA
J ..... SKEENA
K ..... NORTHERN BC
OP ..... OUT OF PROVINCE

COMPLAINT STATISTICS

There were one thousand and ninety-nine new complaints filed at the Tribunal, of which two hundred and seventy-seven were screened out at the initial screening stage.

The *Code* prohibits discrimination in the areas of employment, employment advertisements, wages, services, tenancy, purchase of property, publication and membership in unions and associations and forbids relatiation against a person who pursues human rights.

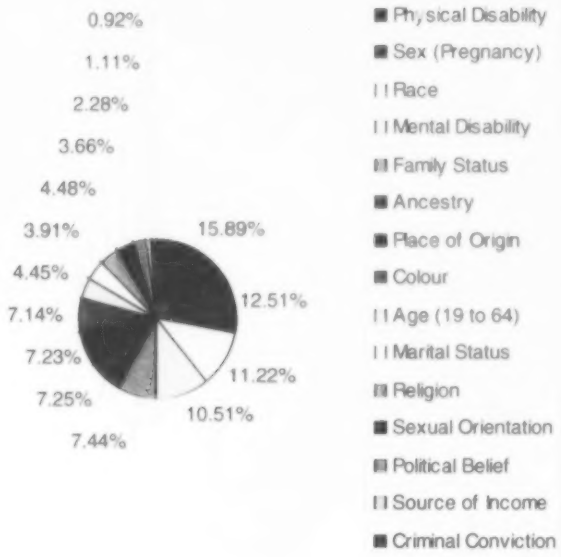
Areas of Discrimination Cited



There are fifteen prohibited grounds of discrimination: age (19 to 64), ancestry, colour, family status, lawful source of income, marital status, place of origin, physical and mental disability, political belief, race, religion, sex, sexual orientation and unrelated criminal conviction. As a result of decisions of this Tribunal and others, the ground of sex has been found to include pregnancy. Not all grounds apply to all areas. Some complainants cite more than one area and ground of discrimination. For instance a complainant with a race-based complaint may also select grounds of ancestry, colour and place of origin.

The area of employment was cited most frequently (45%), followed by services (24%), tenancy (9%), unions and associations (8%) and publications (5%). The most common ground cited was physical disabiity (16%) followed by sex (13%), race (11%), mental disability (11%), and family status (7%). (Ancestry, colour and place of origin each were 7%). Retaliation was cited in 6% of complaints.

Grounds of Discrimination Cited

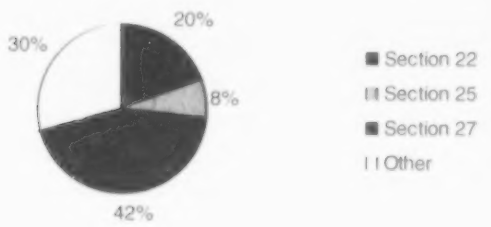


The Tribunal closed eight hundred and seventy-one cases this year. Cases are closed when they are not accepted, withdrawn, abandoned, settled, dismissed or a decision is rendered after a hearing.

PRELIMINARY DECISIONS

Most of the Tribunal members' work this year has involved dealing with preliminary applications. Of five hundred and eight decisions rendered, preliminary decisions represented 92% (four hundred and sixty-nine). These are applications to accept a complaint filed after the six-month time limit, to dismiss a complaint under section 27 of the *Code*, to defer a complaint under section 25 of the *Code*, and applications concerning other procedural matters.

Preliminary Applications Decided



APPLICATIONS TO ACCEPT A COMPLAINT FILED AFTER THE 6-MONTH TIME LIMIT

Under section 22 of the *Code*, complainants must file their complaint within six months of the alleged contravention of the *Code*, or within six months of the last instance of a continuing contravention. The Tribunal has discretion to accept complaints filed after the time limit if it is in the public interest to do so and no substantial prejudice will result to any person.

During our first year of operation, many of the time limit decisions addressed the transitional impact of reducing the time period within which to file a complaint from one year to six months. Not surprisingly, these applications dwindled as the public became more aware of the reduced time limit.

This year, tribunal decisions confirmed that section 22(3) of the *Code* sets out a two-part test; both parts of which must be met for the Tribunal to exercise its discretion to accept a late-filed complaint. The complainant bears the burden of establishing both requirements.

The Tribunal rejected arguments that a complaint advanced under a particular ground of the *Code* was more important than another ground; that a complaint was well founded, and that there was no other proceeding that could address the alleged discrimination. The most important information was the reason for the delay. (*Chrunik* v. *BCIT*, 2004 BCHRT 39)

Of one hundred and one preliminary decisions concerning late-filed complaints, twenty-six were granted. The Tribunal accepted the following as reasons why it was in the public interest to accept a late-filed complaint:

The principle of fair and equal access was persuasive in the case of a complainant with a severe learning disability. The complaint was filed one month late, but the complainant had done everything he could in a timely manner and had relied on his counsellor to file the complaint. (*Penning* v. *Town and Country Tree Service and Davies*, 2004 BCHRT 109)

The cumulative effect of medical, personal and family difficulties and mental disability explained the delay and provided the basis for accepting a complaint filed 6 weeks late. (*Kruger* v. *Xerox Canada Ltd.*, 2004 BCHRT 179)

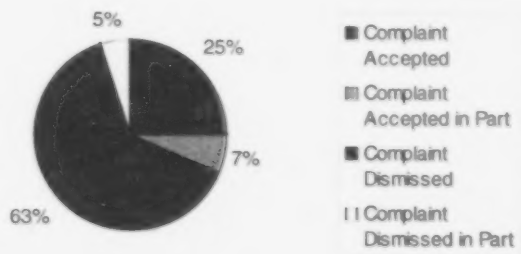
PRELIMINARY DECISIONS

Severe medical problems, confirmed by the complainant's family doctor, and recognition that not proceeding would undermine the *Code*'s purpose of providing a means of redress, provided compelling reasons for accepting the complaint filed four and a half months late. (*Johnson* v. *Century Lanes Kitchen Ltd.*, 2004 BCHRT 285)

Four applications determined that the complaint was filed within the time limit.

The Tribunal considered the *Interpretation Act* in determining how to calculate the six-month time limit. The day of the alleged contravention is not counted. Six months is calculated from the date after the incident to the date that numerically corresponds to that day six months hence, less one day. In one case considered by the Tribunal, the incident occurred on January 13, 2004. The time limit was July 13, 2004, so the complaint was filed in time. (*Quinn* v. *BMO Nesbitt Burns Inc. and Bakalar*, 2004 BCHRT 231)

Section 22 Applications Decided



APPLICATIONS TO DEFER A COMPLAINT

Under section 25 of the *Code*, the Tribunal may defer consideration of a complaint until another proceeding capable of appropriately dealing with the substance of the complaint is concluded.

It is generally in the interests of the parties, and the human rights process, to proceed expeditiously: Before granting a deferral, the Tribunal considers the subject matter and nature of the other proceeding and the adequacy of the remedies available in it. The Tribunal also considers whether it is fair to the parties to defer the human rights complaint and how long it willl take to resolve the human rights issues.

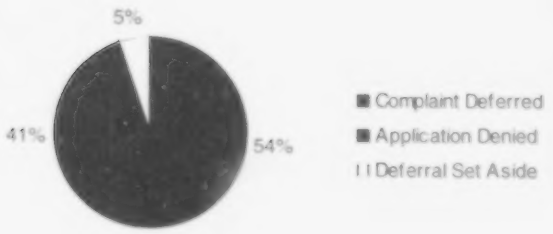
Of thirty-nine applications to defer filed, twenty-one were granted, including ten on consent. Most of the "other proceedings" were labour grievances, but others included civil and family actions, a complaint to the Ombudsman, statutory review and appeal processes under the *Medicare Protection Act* and the *Private Investigator and Security Agencies Act*, a preliminary decision in another complaint, and a pending Supreme Court of Canada decision.

The Tribunal determined that section 25 of the *Code* requires that the complainant has actually commenced another proceeding, rather than there being a potential or intended avenue of redress. (*Ho* v. *FPI Fireplace Products and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers*, 2004 BCHRT 149)

The Tribunal declined to defer a complaint pending the outcome of a Supreme Court of Canada case where that judgment would be instructive but not determinative of the issues in the complaint. (*Drake and Drake* v. *B.C. (Ministry of Health)*, 2004 BCHRT 166)

PRELIMINARY DECISIONS

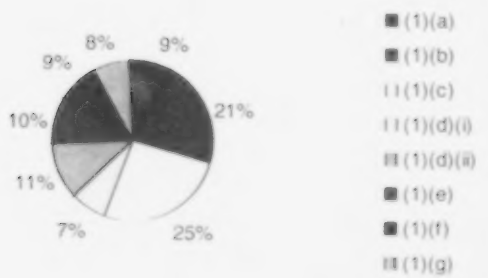
Section 25 Applications Decided



PRELIMINARY APPLICATIONS TO DISMISS

Under section 27 of the *Code*, respondents filed two hundred and nineteen applications to dismiss complaints, of which seventy-five were granted. Most applications to dismiss are filed under more than one sub-section of section 27. The preliminary decisions rendered represent 43% of the Tribunal's decisions this year.

Sub-Sections of Section 27 Relied On



SECTION 27(1)(a): JURISDICTION

As a provincial administrative body, the Tribunal does not have jurisdiction over federally regulated undertakings. The Tribunal considered a complaint against a society which provided child protection services exclusively to Gitxsan communities in accordance with Gitxsan law, culture and traditions. The society was federally funded and its directors had to be Gitxsan citizens, but it was provincially incorporated, located off-reserve and exercised powers delegated under provincial legislation. The complaint was held to be outside the Tribunal's jurisdiction because the society's services formed an integral part of the primary federal jurisdiction over aboriginal peoples under section 91(24) of the *Constitution Act*, 1867. (*Fielden* v. *Gitxsan Child and Family Services Society*, 2004 BCHRT 30)

SECTION 27(1)(b): NO CONTRAVENTION OF THE CODE

The respondent applied to dismiss a complaint on the basis that a number of the complainant's allegations of sexual harassment, if proven, would not violate the *Code*. Although the Tribunal dismissed three allegations, it refused to dismiss the complaint in its entirety on the basis that the question of what constitutes "conduct of a sexual nature" is a nuanced one, which can only be assessed in the context of the evidence as a whole. (*Webber* v. *Alcan Inc.*, 2004 BCHRT 52)

SECTION 27(1)(c): NO REASONABLE PROSPECT OF SUCCESS

To determine that a complaint has no reasonable prospect of success, it is not enough that there is a possibility that the complaint will be successful; rather, the prospect of success has to be reasonable. In making this determination, the Tribunal must consider and weigh all of the information before it. (*Wickham and Wickham* v. *Mesa Contemporary Folk Art*, 2004 BCHRT 134)

The Tribunal held that it was not enough for the complainant to allege that she is First Nations on the one hand, and has been unfairly treated, on the other. She must also allege a nexus between the two. The complainant did not provide any information that would indicate such a nexus. The part of the complaint alleging discrimination based on race was dismissed. (*Edwards* v. *593984 B.C. Ltd.*, 2004 BCHRT 102)

SECTION 27(1)(d): PROCEEDING WOULD NOT BENEFIT THE PERSON, GROUP OR CLASS DISCRIMINATED AGAINST OR WOULD NOT FURTHER THE PURPOSES OF THE CODE

The respondent applied to have an allegation of discrimination due to disability dismissed on the basis that a job posting was not filled through a competition, therefore the complainant suffered no actual loss and proceeding with the complaint would not benefit her. The Tribunal rejected this argument on the basis that the allegation of discrimination addressed the respondent's hiring processes and the *Code* provided potential remedies to the complainant, if successful. They included a declaration that the respondent's conduct was discriminatory, an order that the respondent was to cease the conduct in the future and an award for injury to the complainant's dignity. (*Hall* v. *B.C. Housing Management Commission*, 2004 BCHRT 115)

SECTION 27(1)(e): COMPLAINT MADE IN BAD FAITH OR IMPROPER MOTIVES

The Tribunal confirmed that the fact a complainant files complaints with more than one agency is not an indication that they were filed for improper purposes or made in bad faith. (*Roy* v. *IRL Truck Center and others*, 2004 BCHRT 261)

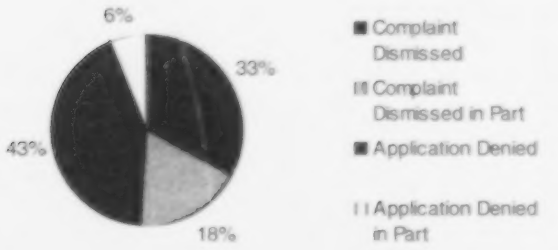
SECTION 27(1)(f): COMPLAINT APPROPRIATELY DEALT WITH IN ANOTHER PROCEEDING

The Tribunal held that the *Code* provides a comprehensive statement of human rights in the province, and a means to address allegations that rights have been violated. Even though the same human rights issues may also be addressed through a grievance and arbitration process, a complainant is not obliged to use the grievance process. The failure to file a grievance or to pursue one to arbitration does not necessarily mean that the substance of the complaint has been appropriately dealt with by another proceeding, or that proceeding with the complaint would not further the purposes of the *Code*. (*Wucherer* v. *Selkirk College*, 2004 BCHRT 85)

SECTION 27(1)(g): ALLEGED CONTRAVENTION OUTSIDE THE TIME LIMIT

The Tribunal ordered that the preliminary application to dismiss the complaint due to late filing be set down for an oral hearing on the timeliness issue when there were disputed facts about when the alleged discrimination occurred. (*Romanowich* v. *S&R Sawmills Ltd. and Stewart*, 2004 BCHRT 87)

Section 27 Applications Decided



OTHER PRELIMINARY PROCEDURAL APPLICATIONS

The one hundred and fifty-three other preliminary applications addressed issues such as adjournments, disclosure, intervenor status, adding respondents, prohibiting publication, and re-opening cases. Examples include:

REQUEST FOR PUBLICATION BAN

The respondents asked the Tribunal not to publish the allegations against them on the Tribunal web site on the basis that the complainant had a history of making frivolous complaints and the complaint would injure their reputation. The Tribunal held that there is a strong public interest in ensuring access to information about Tribunal proceedings. It has the authority to make such an order in circumstances where a participant's private interests outweigh the public interest but it was not persuaded that this application merited a publication ban. (*Sinclair* v. *Blackmore and others*, 2004 BCHRT 37)

APPLICATION TO RE-OPEN COMPLAINT

Complainants are required to diligently pursue their complaint which includes advising the Tribunal of a current address for delivery. In this case, the complainant moved without providing a change of address, and failed to attend a pre-hearing conference. The complaint was dismissed and she applied to have it re-opened. The Tribunal re-opened the complaint because she was out of touch with the Tribunal for only one month, and had a reasonable explanation for missing the pre-hearing conference. (*Saunders* v. *Eggen*, 2004 BCHRT 79)

ADJOURNMENTS

The Tribunal granted an adjournment on condition that the hearing could be rescheduled before a set date, having balanced the prejudice to the complainant in proceeding without counsel to represent her against the prejudice to the respondent in delaying the hearing. In this case, the complainant was unable to continue to pay legal counsel and agreed to a new hearing date and to advise the Tribunal immediately if she retained new counsel unavailable for the new date. The complainant did so after quickly retaining the services of the Human Rights Clinic. (*Sukhdeo* v. *RADASAT International Inc. (No. 2)*, 2005 BCHRT 113)

STAY OF PROCEEDINGS

The Tribunal stayed consideration of a complaint until it decided the same legal issue in another complaint, and a duplication of effort was likely to occur if the complaint proceeded. Although stays are not common, this one was granted to preserve both individual and institutional resources and in the absence of submissions from the complainant that a delay would prejudice him. (*McGowan* v. *B.C. (Ministry of Health Services)*, 2004 BCHRT 123)

Preliminary Decisions

Joinder

The Tribunal may join two or more complaints if doing so is fair and reasonable in the circumstances. In this case, the Tribunal joined complaints that were sufficiently similar that many common legal and factual issues would arise. (*Lanier and others* v. *Mrar and others*, 2004 BCHRT 207)

A joinder application was denied where there were common aspects between the two complaints but the central issues were dissimilar and the legal and factual issues were, to a large extent, distinct. (*Watts* v. *Onyx Industrial Services Ltd. (No. 2)*, 2005 BCHRT 56)

Intervenor Applications

The Tribunal granted an intervenor application where the applicant had a demonstrated interest in the issues. Granting intervenor status would not take the litigation away from the parties, but would provide another perspective on an issue before the Tribunal, and the applicant's participation might assist the Tribunal in resolving the interpretation of a provision of the *Code*. (*Pegura and Foster* v. *School District No. 36 (No. 4)*, 2004 BCHRT 237)

Adding a Respondent

If a complaint against the person the complainant wants to add as a respondent would be out of time, the Tribunal considers the factors used to decide whether to accept a late complaint. In this case it was in the public interest to add the union as a respondent where there were allegations against it that, if proven, could amount to a contravention of the *Code*. Adding the union would not negatively affect the Tribunal's processes, and it had been aware of the allegations against it almost since the complaint was filed. No substantial prejudice would result to any person by adding the union. (*Hunter* v. *Coast 2000 Terminals Ltd.*, 2004 BCHRT 242)

Amending a Complaint

The Tribunal amended a complaint to add an allegation of retaliation where the event was recent, the respondent would not be prejudiced, it would add one day to the hearing, and amending the complaint would be an efficient use of the Tribunal's and parties' time and resources. It refused to add the ground of sex where the events occurred three years before the complaint was filed, there was no explanation as to why the allegation was not included in the complaint, and the respondents had no previous notice of it. (*Metcalfe* v. *International Union of Operating Engineers, Local 882, and others (No. 6)*, 2005 BCHRT 78)

Disclosure

The Tribunal ordered disclosure that required the respondent to gather and compile information where to do so would facilitate the just and timely resolution of the complaint. While the respondent was concerned about the time involved, it was arguably relevant, might be central to some of the issues raised in the complaint, and was not otherwise available. (*Auchoybur* v. *Walcan Seafood*, 2005 BCHRT 35)

Will-Say Statements

The primary purpose of will-say statements is to ensure the fairness and efficiency of the Tribunal's process. This includes providing the

parties with enough information, in advance of the hearing, for them to know the case they have to meet. They may also highlight areas of testimony about which there is no dispute. In determining that the complainants' will-say statements were sufficient, the Tribunal considered their content in light of all the information that had passed between the parties. (*Pegura and Foster* v. *School District No. 36 (No. 3)*, 2004 BCHRT 170)

Decisions in Other Applications

SETTING ASIDE ORDER TO ATTEND

Where a witness' evidence might be relevant, and admissibility could not be determined on a preliminary basis, the Tribunal declined to revoke an order to attend a hearing. (*Jiwany and Jiwany* v. *West Vancouver Municipal Transit*, 2005 BCHRT 14)

APPLICATION FOR COSTS

The Tribunal may order costs against a party who has engaged in improper conduct or who contravenes a Tribunal rule or order. The Tribunal declined to order costs for a failure to attend a pre-hearing conference on one occasion. (*Butler* v. *Health Ventures Ltd.*, 2005 BCHRT 79)

The Tribunal ordered costs against a complainant who had repeatedly failed to comply with the Tribunal's rules and directions. In determining the amount awarded, the Tribunal took into account the punitive purpose of a costs award as well as a concern that the amount not be so high as to likely be beyond the party's means to pay. (*Mahal* v. *Hartley*, 2004 BCHRT 63)

The Tribunal may order costs in cases where it ultimately decides it does not have jurisdiction over the complaint. (*Altakla* v. *Power*, 2004 BCHRT 253)

DISCRIMINATION

Human rights statutes provide protection from discrimination in particular areas of human social interaction on particular grounds. Human rights codes are relatively new in the Canadian legal system. The first comprehensive code was introduced in Ontario in 1962. British Columbia enacted its first human rights code in 1973. The grounds and areas protected by human rights legislation have historical underpinnings and reflect the changing moral conscience of Canadians since the Second World War.

In the leading case of *Andrews (Law Society of British Columbia)* v. *Andrews*, [1989] 1 S.C.R. 143. MacIntyre J. of the Supreme Court of Canada commented that, "with a steady increase in population from the earliest days of European Immigration into Canada and with the consequential growth of industry, agriculture and commerce and the vast increase in national wealth which followed, many social problems developed. The contact of the European immigrant with the indigenous population, the steady increase in immigration bring-

FINAL DECISIONS

ing those of neither French nor British background, and in more recent years the greatly expanded role of women in all forms of industry, commercial and professional activity led to much inequality and many forms of discrimination". In the court's view, these circumstances prompted legislatures to enact human rights statutes to provide protection from discrimination in these historic areas, on these recognized grounds, to shape a society in which all people had a right to participate fully and be treated with respect.

The *Code* sets out the right of every person to participate fully and without discrimination in British Columbia society. The purposes of the *Code* are broadly stated in section 3. They are to eliminate discrimination, to promote a climate of mutual understanding and respect, and to provide a means of redress to individuals who are discriminated against contrary to the *Code*.

The *Code* authorizes the Tribunal to consider allegations of discrimination of a person or a group of persons, against corporations, societies, agencies, associations or trade unions that are regulated by B.C. law, regarding incidents that occurred in B.C. The Tribunal does not have authority to consider allegations of discrimination against federally-regulated undertakings, or about conduct outside of B.C.

Final decisions are rendered after an oral hearing into the merits of a complaint and determine whether an allegation of discrimination is justified. If it is not, written reasons are given and the case is dismissed. If discrimination is found, written reasons are given and a remedy is ordered, including the mandatory order that the respondent cease and refrain from committing the same or a similar contravention of the *Code*.

CASE HIGHLIGHTS

This year the Tribunal rendered thirty-nine final decisions. Nineteen of the complaints were found to be justified; twenty were dismissed. The Tribunal heard and determined complaints in the areas of employment, services and tenancy. Several of the complaints alleged discrimination in more than one area and were based on more than one ground.

No complaints heard dealt with publication, purchase of property, employment advertisements, unions, or equal pay. The greatest number of decisions were rendered in the area of employment (52%) with twenty-three complaints heard and twelve found to be justified. The area of services represented 32% of the hearings, with a total of fourteen complaints heard and nine found justified. The area of tenancy represented 16% of the hearings with a total of seven complaints heard and two found to be justified.

GROUNDS OF DISCRIMINATION

DISABILITY DISCRIMINATION

Disability includes both mental and physical disability. Mental disability includes mental disorders, development disorders and learning disorders.

Physical disability generally means a physiological state that is involuntary, has some degree of permanence, and impairs the person's ability, in some measure, to carry out the normal functions of life. It has been interpreted to include such conditions as asthma, alcoholism, acne, diabetes, epilepsy, paralysis, amputation, visual, hearing and speech impediment, high blood pressure, dyslexia and physical reliance on a guide dog or wheelchair.

Thirteen decisions concerned complaints of discrimination based on disability. Of these, seven were found to be justified. Examples of complaints heard by the Tribunal on the ground of disability include:

There was discriminatory treatment by Knight & Day Restaurant of a complainant who was an insulin-dependent diabetic. (*Leong* v. *Knight & Day Restaurants Corp.*, 2004 BCHRT 84)

A fifteen-year employee of Revy Home Centres was on long-term disability when Revy was sold to Rona Inc. The Tribunal found that Rona discriminated against the complainant when it refused to employ anyone who was on long-term disability without making individual inquiries about circumstances. (*Fenton* v. *Rona Revy Inc. (No. 2)*, 2004 BCHRT 143)

The District of Sechelt was found to have discriminated against a complainant by not providing a walkway, appropriate or safe for wheelchair and scooter users. (*Moser* v. *District of Sechelt*, 2004 BCHRT 72). A judicial review has been filed in this case.

The Ministry of Health's policy which prevented a complainant with severe cerebral palsy from hiring her father as one of her care givers was found discriminatory. (*Hutchinson and Hutchinson* v. *B.C. (Min. of Health and Min. Responsible for Seniors)*, 2004 BCHRT 58). A judicial review has been filed in this case.

The Office of the Superintendent of Motor Vehicles was found to have discriminated against a complainant with congenital optic atrophy (a visual disability), who was a commercial truck driver with doctors' reports confirming that he was fully able to drive safely, by cancelling his licence without providing him with an individual assessment of his driving safety. (*Bolster* v. *B.C. (Min. of Public Safety and Solicitor General) (No. 2), 2004 BCHRT 32*). A judicial review has been filed in this case.

The Duty to Accommodate

One of the central concepts in human rights law is the duty to accommodate. It is a means of fulfilling the *Code*'s purpose of, *"fostering a society in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia"*. Accommodation means providing an opportunity to participate in employment or access a service for a person who has special requirements due to a protected ground. A duty to accommodate commonly arises in complaints concerning disability. The following complaint illustrates the duty to accommodate.

The Tribunal found that a complainant became ill, and took time off work while he received medical treatment. After several weeks, he was pronounced medically fit to return to work. However, his employer refused to allow him to return. He had been diagnosed with a bi-polar disorder.

There is a long history to this case. The Tribunal's initial finding of discrimination in 2000 (*Gordy* v. *Painter's Lodge*, 2000 BCHRT 16) was judicially reviewed and quashed by the B.C. Supreme Court in [2000] B.C.J. No. 2504 (Q.L.). This Judgment was appealed and the B.C. Court of Appeal remitted it to the Tribunal for re-hearing and re-determination of whether the defence of a *bona fide* occupational requirement ("BFOR") had been established. *(Oak Bay Marina Ltd.* v. *British Columbia (Human Rights Commission)*, 2002 BCCA 495)

FINAL DECISIONS

The Tribunal decided that the complaint was justified. It held that Oak Bay failed to prove that its refusal to hire the complainant was reasonably necessary to the accomplishment of its legitimate work-related goal of ensuring reasonable safety on the water.

The decision provides a summary of the law on an employer's duty to accommodate.

The authorities cited establish the following principles: *"The duty to accommodate is a positive obligation. An employer has a duty to obtain all relevant information about the employee's disability, at least where it is readily available. This includes information about the employee's current medical condition, prognosis for recovery, ability to perform job duties, and capabilities for alternate work. The term 'undue hardship' requires respondents in human rights cases to seriously consider how complainants can be accommodated. A failure to give any thought or consideration to the issue of accommodation, including what, if any, steps could be taken, does not satisfy the duty."* (*Gordy* v. *Painter's Lodge (No. 2)*, 2004 BCHRT 225)

SEX DISCRIMINATION

Twelve decisions concerned complaints of sex discrimination with five of the complaints resulting in findings of discrimination. Five of the complaints were based on allegations of discrimination due to pregnancy. Three of these complaints were found to be justified.

A complainant was hired to do promotion and work as a server by Capone's Restaurant & Live Jazz Club. When her pregnancy became apparent, her shifts were reduced, she was denied opportunities, and disrespectful comments were made about her condition. When she was seven months pregnant she was fired allegedly for poor performance. The Tribunal found that she was subjected to discriminatory treatment by the restaurant and was fired due to her pregnancy and awarded compensation for lost wages, bonus payments, injury to dignity, and expenses incurred. (*Sauve* v. *538185 B.C. Ltd. dba Capone's Restaurant & Live Jazz Club*, 2004 BCHRT 42)

Four cases alleged sexual harassment, one of which was found justified.

A complaint alleging discrimination based on sexual orientation was dismissed. (*Dadvand and Ross* v. *CB Richard Ellis Property Management Services and David Craig Apartments and Dube*, 2004 BCHRT 36). A judicial review has been filed in this case.

A complaint based on sex discrimination, filed by a male, and found to be justified by the Tribunal, was set aside on judicial review. (*Johnston v. St. James Community Service Society and Goddard*, 2004 BCHRT 51)

AGE DISCRIMINATION

One case proceeded on the ground of age. The Tribunal found that age was a factor in the fifty-six year old complainant being fired from her job as a waitress. (*Perk v. Seel*, 2004 BCHRT 277)

RELIGIOUS DISCRIMINATION

Two complaints proceeded to hearing on the ground of religion. In one case the complainant failed to appear. The Tribunal found religion to

be a factor in the termination of the employee in the other. (*Derksen v. Myert Corps Inc.*, 2004 BCHRT 60)

FAMILY STATUS

Four complaints cited the ground of family status, three of which were found to be justified. One of the successful complaints was *Hutchinson*, which also proceeded on grounds of disability.

A fact pattern new to the Tribunal on the grounds of family status involved a complaint filed by a foster parent against an insurance company. The complainant had a secondary insurance policy, provided to foster parents by the B.C. Ministry of Children and Family Development. In order to make a claim under the secondary policy, the complainant was required to obtain a letter denying her claim from her primary insurer. As a result of such a request, and without seeking any information concerning the nature of the secondary policy, the primary insurer automatically denied the complainant a renewal of her homeowner's policy. The Tribunal found that the effect of the respondent insurer applying its standard risk assessment was discriminatory against the complainant because she was a foster parent. (*Fraser* v. *ING Insurance Co. of Canada*, 2004 BCHRT 163)

ANCESTRY, COLOUR, RACE, PLACE OF ORIGIN

Six decisions were rendered on the grounds of ancestry, colour, race or place of origin. Two were determined to be justified.

The Tribunal held that a complainant was subjected to adverse treatment with respect to her tenancy on the grounds of ethnicity and ancestry when she was ordered to cease cooking ethnic food, due to its "offensive odour" or face eviction. (*Chauhan* v. *Norkam Seniors Housing Cooperative Association*, 2004 BCHRT 262).

JUDICIAL REVIEW

The Tribunal is subject to the supervision of the superior courts in respect of its decision-making. There is no right to appeal Tribunal decisions, but a party who believes that the Tribunal may have erred in the exercise of its decision-making powers may seek judicial review in the Supreme Court of British Columbia.

Two provisions of the *Administrative Tribunals Act*, referred to earlier in this report, apply to applications for judicial review of Tribunal decisions. Section 57 provides a sixty-day time limit for commencing an application for judicial review of final decisions. Section 59 sets out the standards of review applicable to Tribunal decisions.

This year, there were thirteen applications for judicial review of Tribunal decisions. The Tribunal appeared, through its counsel, at nine of those applications. The BC Supreme Court released four final decisions.

The Court dismissed the application for judicial review of a Tribunal decision finding a sexual harassment complaint justified. The Court found that the Tribunal's conclusion was reasonable and well-supported in the evidence, and that the petitioner had not shown that the Tribunal's findings of fact were patently unreasonable. (*Bartman* v. *Twohey et al.*, 2004 BCSC 1211)

The Court allowed the application for judicial review of a Tribunal decision that it had jurisdiction to continue with a complaint after the complainant had died. The Court disagreed and set aside the Tribunal's decision. *(HMTQ* v. *Gregoire*, 2005 BCSC 154). An appeal has been filed.

The Supreme Court also released two oral decisions and two interim decisions on applications for judicial review.

The Tribunal appeared on several cases before the BC Court of Appeal. The Court of Appeal released one decision allowing an appeal of a Supreme Court decision, and reinstated the Tribunal's decision on remedy.

A complainant was the only person on an eligibility list for a firefighter position following a 1994 competition in the District of Campbell River. However, the District cancelled the list, resulting in a competition for the next position in 1995. The complainant was not the successful candidate. He filed a complaint about the 1994 and 1995 events, but withdrew the part of the complaint dealing with the 1995 competition. The Tribunal held that the complaint was justified as the complainant's family status was a factor in the decision to cancel the eligibility list (his father was also a firefighter). No judicial review was sought of that decision.

The parties could not agree on a remedy, and returned to the Tribunal for a hearing on the issue. The complainant sought an order that he be hired in a firefighter position posted in 2002. The District argued that the complainant's conduct during the 1995 competition had disqualified him from that position, and that whatever eligibility he had from the 1994 competition expired at that point. The Tribunal rejected that argument, finding that but for the 1994 discrimination, there would not have been a 1995 competition. Alternatively, the Tribunal found that the complainant's conduct in 1995 did not disqualify him; rather the District had again discriminated against the complainant. The Tribunal ordered the District to hire the complainant to fill the posted position.

In 2003, the Supreme Court set aside the Tribunal's remedy on the basis that the Tribunal exceeded its jurisdiction in considering the 1995 competition since the 1995 complaint had been withdrawn. The complainant appealed.

The appeal was allowed. The Court of Appeal found that the Tribunal's decision ordering the District to hire the complainant in 2002 was causally linked to the 1994 discrimination and could not be impeached on jurisdictional grounds. As to the Tribunal's consideration of the 1995 competition, the Court noted that the Tribunal undertook this analysis in the alternative. In any event, the Tribunal was entitled to consider the 1995 events even though the 1995 complaint was withdrawn. The withdrawal could not be interpreted as a concession that there was no discrimination. Finally, the complainant was entitled to contest the District's argument that his conduct in 1995 disqualified him, and the Tribunal's finding that the District's motive in 1995 was discriminatory did not result in an excess of jurisdiction. (*Campbell River (District)* v. *Bellefleur*, 2004 BCCA 601). The parties are appearing before the Tribunal to deal with other remedial claims.

SPECIAL PROGRAMS

Section 42(3) of the *Code* recognizes that treating everyone the same does not necessarily promote true equality and the elimination of discrimination. It provides for special programs that treat disadvantaged individuals or groups differently in order to recognize the reality of their diverse characteristics and their unique needs.

The Tribunal has published a policy explaining the special programs approval process.

A special program is any program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups.

One type of special program is an employment equity program which is designed to improve the conditions of individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex and which achieves or is likely to achieve that objective.

A special program, which is approved by the chair of the Tribunal, is deemed not to be discriminatory under the *Code* for the duration of the approval. Special programs may be undertaken without Tribunal approval, but will not protect the program provider from a human rights complaint.

The Tribunal's policy on special programs outlines the requirements for obtaining approval of a special program. All approvals are time-limited, generally between six months to five years in duration, with employment equity programs usually approved for several years. Periodic reporting may be a condition of approval. On expiry, a program provider may apply to renew the approval.

Organizations seeking special programs approval include universities, colleges and school districts, ministries of government and Crown corporations, hospitals, societies and associations providing community and health services (including transition houses), sports associations and businesses.

An applicant for a special program approval may be asked to provide information about groups or others who may be interested in the application. The Tribunal may seek input from interested parties.

In the last year, the chair approved three new special programs and renewed two others. One of the new special programs allows a drop-in centre for high risk, adult, female survival sex workers, to restrict its hiring to women and transgendered women.

The other two new special programs allow hiring restricted to persons of Metis or aboriginal ancestry for positions requiring direct, cultural sensitive contact with, and acceptance within those respective communities, in the context of child, family and health-related services.

TRIBUNAL MEMBERS

HEATHER M. MACNAUGHTON, CHAIR

Ms. MacNaughton was appointed as chair of the Tribunal on August 1, 2000, and was reappointed for a further five year term beginning July 31, 2005 She holds both a Bachelor of Law (1982) and Master of Law (1998) from Osgoode Hall Law School and a Bachelor of Arts (with distinction) from Brock University (1979). Her Master's work focused on the Litigation Process and Alternative Dispute Resolution.

Prior to her appointment to the Tribunal, Ms. MacNaughton chaired the Ontario Human Rights Board of Inquiry and the Ontario Pay Equity Hearings Tribunal.

Ms. MacNaughton left private practice in 1995 to become a Vice Chair of the Ontario Human Rights Board of Inquiry, the Pay Equity Hearings Tribunal, and the Employment Equity Tribunal. Prior to that, she had been a partner with a national law firm practising in the areas of Labour, Employment, Human Rights, Administrative Law and Civil Litigation.

J.A. (TONIE) BEHARRELL, MEMBER

Ms. Beharrell was appointed as a full-time member of the Tribunal on December 2, 2002. She holds a law degree from the University of British Columbia (1997) and a Bachelor of Arts from Simon Fraser University (1994).

Prior to joining the Tribunal, Ms. Beharrell was an Associate at a national law firm practising in the areas of Labour, Employment, Human Rights, and Administrative Law.

BARBARA HUMPHREYS, MEMBER

Ms. Humphreys was appointed as a full-time member of the Tribunal in 1997. She holds a law degree from the University of Victoria (1984) and a Bachelor of Arts from Sir George Williams University (1969).

Ms. Humphreys joined the B.C. Council of Human Rights in 1990. She was actively involved in the transition from the former B.C. Council of Human Rights to the Human Rights Tribunal.

Prior to joining the B.C. Council of Human Rights, Ms. Humphreys was an Ombudsman Officer for the Office of the Ombudsman.

BARBARA J. JUNKER, MEMBER

Ms. Junker was appointed as a full-time member of the Tribunal on July 28, 2003. She holds a Bachelor of Commerce (1977) from the University of British Columbia.

Prior to joining the Tribunal, Ms. Junker spent nine years as a Vice-Chair at the Labour Relations Board. Prior to that, Ms. Junker worked in the healthcare industry as an employer representative in Labour and Employee Relations.

LINDSAY LYSTER, MEMBER

Ms. Lyster was appointed as a full-time member of the Tribunal on September 30, 2002. She holds a law degree from the University of British Columbia (1991) and a Bachelor of Arts (with distinction) from the University of Victoria (1987).

Prior to joining the Tribunal, Ms. Lyster was Policy Director of the B.C. Civil Liberties Association. Prior to that she was an Adjunct Professor, Faculty of Law, University of British Columbia, teaching in the area of Canadian Constitutional Law and before that she was an Associate at a national law firm practising in the areas of Labour, Human Rights, Constitutional Law, Administrative Law, and Employment Law.

DIANE MACLEAN, MEMBER

Ms. MacLean was appointed as a full-time member of the Tribunal on July 28, 2003. She holds a law degree from the University of British Columbia (1985), a Bachelor of Arts (1972) and a Master of Arts (1980) in Economics from Simon Fraser University.

For several years, Ms. MacLean practised law, taught university courses, and worked as an economic and legal researcher and writer.

Ms. MacLean began working for the Ministry of Labour in 1993, first as a Policy Specialist at the Pension Standards Branch and later as an Officer at the Employment Standards Branch.

Just prior to her appointment to the Tribunal, Ms. MacLean was a Vice-Chair at the Workers' Compensation Appeal Tribunal.

TRIBUNAL MEMBERS

ANA MOHAMMED, MEMBER

Ms. Mohammed was appointed as a full-time member of the Tribunal on March 1, 2001. She holds a law degree from the University of Western Ontario (1990) and an Honours Bachelor of Arts degree from the University of Manitoba (1986).

Prior to joining the Tribunal, Ms. Mohammed was pursuing her Master of Law degree at the University of British Columbia in the areas of Human Rights and Employment Law, and was a Human Rights Consultant in British Columbia. Prior to that, she practised law for five years in Toronto, primarily in the areas of Labour and Employment (with an emphasis on Human Rights) and Criminal Law.

KURT NEUENFELDT, MEMBER

Mr. Neuenfeldt was appointed as a full-time member of the Tribunal on January 6, 2003. He holds a law degree from the University of British Columbia (1978) and a Bachelor of Arts degree from the University of Wisconsin (1972).

Before joining the Tribunal, Mr. Neuenfeldt was a member of the Immigration and Refugee Board of Canada for over nine years. Prior to that, he was in private practice in the Vancouver area. For several years, Mr. Neuenfeldt was with the Legal Services Society of BC. While with the Society, he held a range of positions including Staff Lawyer, General Counsel and Director of Client Services.

ABRAHAM OKAZAKI, MEMBER

Mr. Okazaki was appointed as a full-time member of the Tribunal on July 28, 2003. He holds a law degree from the University of British Columbia (1971) and a Bachelor of Arts degree from the University of Alberta (1964).

Mr. Okazaki practiced law, primarily Corporate and Commercial, but also Civil and Criminal Litigation. Mr. Okazaki has experience as an executive and educator in both the private and public sectors. He has held executive, administrative and teaching positions and directorships in businesses, universities and not-for-profit organizations, both Canadian and international.

Prior to joining the Tribunal, Mr. Okazaki was a Vice-Chair of the Workers' Compensation Appeal Tribunal.

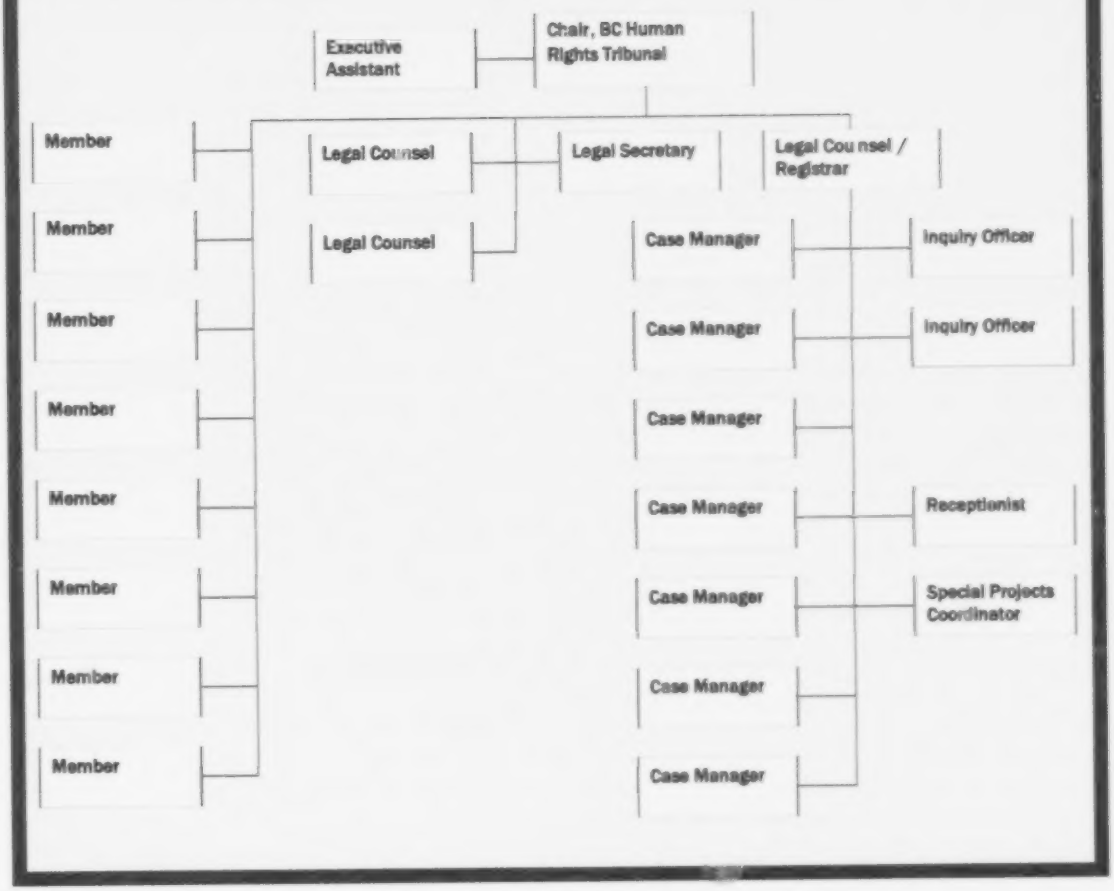
JUDITH PARRACK, MEMBER

Ms. Parrack was appointed as a full-time member of the Tribunal on November 4, 2004. Ms. Parrack holds a law degree from Osgoode Hall Law School (1987).

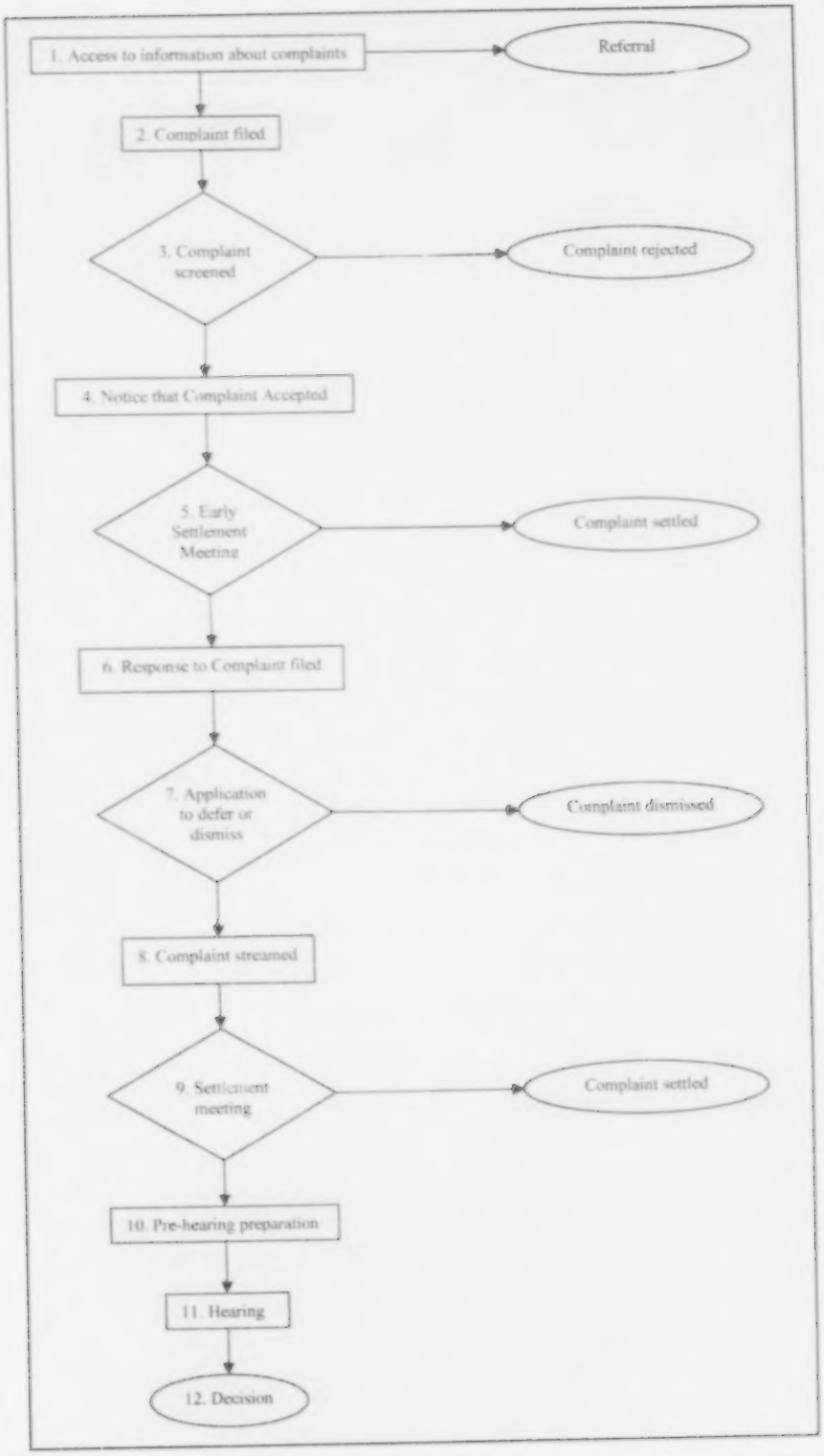
Prior to joining the Tribunal, Ms. Parrack was in private practice, practising in the areas of Labour, Human Rights and Administrative Law. Prior to that Ms. Parrack was a full-time member of the B.C. Human Rights Tribunal from 1999 to 2002. Ms. Parrack was also a staff lawyer at the B.C. Public Interest Advocacy Centre from 1995 to 1999 and was an Associate with a national law firm from 1989 to 1994.

ORGANIZATIONAL CHART

BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL



COMPLAINT FLOW CHART



Summary of Steps in the Complaint Procedure

1. Access to information about complaints

The Tribunal has two inquiry officers who give callers basic information about human rights protection under the *Code*, the complaint process and other organizations providing assistance in human rights matters. If the call is not about a human rights matter, the inquiry officers may refer the caller to another agency. Complaint forms, guides and information sheets are available at the Tribunal, on its Web site, at government agents' offices, and at the Human Rights Clinic and other organizations.

2. Complaint filed

The first step in the complaint process is filing a complaint form with the Tribunal.

3. Complaint screened

When a complaint is filed, it is assigned to a case manager who reviews the complaint form to ensure that it is complete, apparently within the jurisdiction of the Tribunal, and filed within the 6-month time limit.

If the complaint form is not complete, the case manager will outline the deficiency and give the complainant a limited time to properly complete it.

If is clear that the complaint does not involve a B.C. matter or a human rights matter covered by the Code, the case manager will recommend to the chair that the complaint be rejected.

If it appears that the complaint was filed after the 6-month time limit, the case manager will get input from the parties about whether it is in the public interest to accept the complaint and whether anyone would be substantially prejudiced by the delay in filing. A Tribunal member will decide whether to accept the complaint.

4. Notice that complaint accepted

After screening a complaint, the Tribunal notifies the parties that the complaint has been accepted.

5. Early settlement meeting option

The parties can choose to meet with a mediator from the Tribunal who will assist them to resolve the complaint before any further steps in the complaint process are taken. Many complaints resolve at this stage.

6. Response to complaint filed

If the parties do not settle or do not want an early settlement meeting, the respondent files a response to the complaint form and may also file an application to defer or dismiss the complaint.

7. Applications to defer or dismiss

If a respondent applies to have the complaint deferred or dismissed, the Tribunal will get input from the parties and a Tribunal member will decide the application. Complaints may be deferred if there is another proceeding capable of appropriately dealing with the substance of the complaint. Complaints may be dismissed for the reasons set out under s. 27(1) of the *Code*.

Summary of Steps in the Complaint Procedure

8. Complaint streamed

Once a response to the complaint is filed and screened, the Tribunal decides whether the standard stream under the Tribunal's *Rules* is appropriate, or if the process will be case-managed by a Tribunal member. Most complaints follow the standard process, with the case-managed stream being used only for complaints that are particularly complex or that have other special characteristics.

9. Settlement meeting

After the complaint is streamed, the parties are given another opportunity to attend a settlement meeting with a Tribunal mediator.

10. Pre-hearing preparation

If the complaint has not settled, the parties are required to prepare for the hearing, by exchanging relevant documents, witness lists, and positions on remedy. There is also a pre-hearing telephone conference to ensure that the parties are prepared for the hearing.

11. Hearing

Hearings are held before a member of the Tribunal or a panel of three members in exceptional cases. Hearings are conducted in person and are open to the public. The parties provide evidence through witnesses, documents and other items. Each party also has the opportunity to challenge the other party's evidence and to make arguments supporting their positions.

12. Decision

Based on the evidence, the arguments and the relevant law, a Tribunal member or panel decides whether the complainant has proven that discrimination occurred and, if so, whether the respondent has proven a defence to the discrimination. If the member or panel decides that the complaint is not justified, the complaint is dismissed. If the complaint is justified, the member or panel makes orders to remedy the discrimination.

PUBLICATIONS AND STAFF

The following Guides, Information Sheets and Policies are available on our web site or by contacting the Tribunal. Please refer to the back cover of this report for contact information.

GUIDES

1 The BC Human Rights Code and Tribunal
2 Making a Complaint and guide to completing a Complaint Form
3 Responding to a Complaint and guide to completing a Response to Complaint Form
4 The Settlement Meeting
5 Getting Ready for a Hearing

INFORMATION SHEETS

1 Tribunal's Rules of Practice and Procedure
2 How to Name a Respondent
3 What is a Representative Complaint?
4 Completing Time Limit Forms - Complainant
5 Completing Time Limit Forms - Respondent
6 Tribunal Complaint Streams
7 Standard Stream Process - Complainants
8 Standard Stream Process - Respondents
9 How to Ask for an Expedited Hearing
10 How to Deliver Communications to Other Participants
11 What is Disclosure?
12 How to Make an Application
13 How to Add a Respondent
14 How to Add a Complainant
15 How to Make an Intervenor Application
16 Applying to Dismiss a Complaint Under Section 27
17 How to Request an Extension of Time
18 How to Apply for an Adjournment
19 How to Require a Witness to Attend a Hearing
20 Complainant's Duty to Communicate with the Tribunal
21 How to Find Human Rights Decisions
22 Remedies at the Human Rights Tribunal
23 How to Seek Judicial Review
24 How to Obtain Documents From a Person or Organization Who is Not a Party to the Complaint

POLICIES

- Complainant's Duty to Communicate with the Tribunal
- Settlement Meeting
- Special Programs

TRIBUNAL STAFF

Registrar / Legal Counsel
Vikki Bell, QC

Executive Assistant to the Chair
Sheila O'Reilly

Legal Counsel
Katherine Hardie
Denise Paluck
Marlene Tyshynski

Legal Secretary
Mattie Kalicharan

Case Managers
Noreen Barker (part-time)
Kevin D'Souza
Pam Danchilla
Sarah Johnson
Peter Dowsett
Janice Fletcher (part-time)
Lindene Jervis
Maureen Shields

Special Projects Coordinator
Luke LaRue

Inquiry Officers
Noreen Barker (part-time)
Lorne MacDonald

Reception
Janet Mews

BC Human Rights Tribunal
1170 – 605 Robson Street
Vancouver, BC V6B 5J3
Web site: www.bchrt.bc.ca

BRITISH COLUMBIA

Phone: (604) 775-2000
Fax: (604) 775-2020
TTY: (604) 775-2021
Toll free: 1-888-440-8844